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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 000536

SIPDIS

DEPARTMENT FOR SA, SA/INS, DRL; NSC FOR E. MILLARD

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SUBJECT: Sri Lanka's Supreme Court rules that December 2001 election was unfair for many Tamils

Refs: (A) Colombo 485; (B) Colombo 147

(U) Classified by Lewis Amselem, Deputy Chief of Mission. Reasons 1.5 (b,d)

1. (C) SUMMARY: Sri Lanka's Supreme Court ruled March 25 that the previous government violated the fundamental rights of numerous Tamils by preventing them from voting in the December 2001 general election. Human rights activists applauded the ruling, stating that it set a precedent for freer-and-fairer elections in the future. Observers believe that the surprise ruling is a political black eye for the People's Alliance (PA) and the radical JVP, which were in power at the time. END SUMMARY.

2. (U) In a dramatic ruling, the Supreme Court announced March 25 that the fundamental rights of voters in the north and east were violated when they were not permitted to vote in the December 2001 general election. Agreeing with the case presented by the Tamil plaintiffs, the court ruled specifically that the Sri Lankan military, acting on orders from the PA-Janantha Vimukthi Peramuna (JVP) government then in power, prevented Tamils in the Vavunia and Batticaloa areas from passing through military check points in order to vote. (Note: Accounts by election observers placed the numbers of Tamils prevented from voting that day in the north and east in the tens of thousands -- please also see the 2001 human rights report for Sri Lanka.) The Court also held that VIPs in the government (including the president and several of her key ministers) were given special treatment and allowed to vote illegally before the election.

3. (U) As for its remedy, the court allowed that there could be no vote recount at this point, but it fined Sri Lanka Army Commander Lt. General L. Balagalle, then-Commissioner of Elections D. Dissanayake, and the government a total of 391,000 Sri Lankan Rupees (approximately USD 4,100) each for their roles in mismanaging the election. From what Mission understands (with the proviso that it is sometimes very difficult to understand Sri Lanka's almost Dickensian legal system), the case cannot be appealed. (Note: The ruling was made by a three-justice bench of the 11-member Supreme Court. The bench was apparently acting with full-and-plenary powers.)

4. (C) Human rights observers were pleased with the ruling, hoping that it would set a precedent for freer-and-fairer elections in the future. Kingsley Rodrigo, the head of PAFFREL, a well-known local NGO involved in election monitoring, told us that the ruling showed that the oft-criticized Supreme Court can act in a decisive fashion and in the public interest. He hoped the ruling would have a positive impact on proposed local elections in the north and east which might take place later this year. (Note: Per Ref A, at the end of the recent sixth round of peace talks, a joint statement was issued stating that the Tigers would "favorably consider" allowing local elections to be held in the north and east, including, presumably, in Tiger-controlled areas.)

5. (C) Regarding potential political ramifications, observers have told us that the ruling was a black eye for the PA and the JVP (who are currently trying to unite and form an alliance again). Desmond Fernando, a prominent lawyer and human rights advocate (with close connections to the prime minister), told us that the Supreme Court's decision was a huge embarrassment for President Kumaratunga, the leader of the PA, and a blow to her image as tolerant toward all communities. Tamils, he commented, will be sure to view Kumaratunga in an increasingly bad light, given that it was her government that prevented members of their community from voting. (Note: Re the December 2001 election, Kumaratunga is also in some trouble from a different angle. Her close relative, former minister Anuruddha Ratwatte, and two of his sons and 13 others, are currently on trial for alleged involvement in the

slaying of ten Muslims on election day.)

16. (C) COMMENT: The outcome of the case is clearly a victory for Tamils and human rights advocates, who have long fought for judicial acknowledgement of electoral abuses. The fact that individuals (Balagalle and Dissanayake) were held directly responsible for their actions was another small, but important, step in overcoming Sri Lanka's history of impunity regarding human rights matters. On the political side, the ruling was clearly a blow to the PA and JVP, including the president herself. The fact that the ruling emerged from a court reportedly controlled by an ally of the president's (Chief Justice Sarath Silva) was also a bit of a surprise. END COMMENT.

17. (U) Minimize considered.

WILLS